

STUDENT PROSPERITY SAVINGS PROGRAM AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill repeals income tax incentives related to the Student Prosperity Savings Program.

Highlighted Provisions:

This bill:

- ▶ repeals the corporate income tax deduction for a donation to the Student Prosperity Savings Program;
- ▶ repeals the individual income tax credit for a donation to the Student Prosperity Savings Program;
- ▶ eliminates a record retention requirement; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:**AMENDS:**

53B-8a-203, as enacted by Laws of Utah 2017, Chapter 389

59-7-106, as last amended by Laws of Utah 2020, Sixth Special Session, Chapter 15

59-10-1017, as last amended by Laws of Utah 2017, Chapter 389

63I-2-259, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 12

REPEALS:

59-10-1017.1, as enacted by Laws of Utah 2017, Chapter 389

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53B-8a-203** is amended to read:

53B-8a-203. Donations to the program.

(1) (a) A person may make a donation to the program by:

(i) sending the donation to the plan; and

(ii) including with the donation, direction that the donation benefit the program.

(b) A person making a donation shall include the person's name and mailing address with the donation.

(2) (a) The plan shall mail a receipt to the person that makes the donation.

(b) The receipt described in Subsection (2)(a) shall state:

(i) the name of the person that made the donation;

(ii) the amount of the donation; and

(iii) the date on which the person makes the donation.

(c) The date on which the person makes a donation to the program is the date on which the plan receives the donation, unless the plan receives the donation on a Saturday, a Sunday, or a holiday, in which case the date on which the person makes the donation shall be the first business day after the day on which the plan receives the donation.

~~[(d) A person that receives a receipt described in Subsection (2)(a) shall retain the receipt for the same time period a person is required to keep books and records under Section 59-1-1406.]~~

Section 2. Section **59-7-106** is amended to read:

59-7-106. Subtractions from unadjusted income.

(1) In computing adjusted income, the following amounts shall be subtracted from unadjusted income:

(a) the foreign dividend gross-up included in gross income for federal income tax purposes under Section 78, Internal Revenue Code;

(b) subject to Subsection (2), the net capital loss, as defined for federal purposes, if the taxpayer elects to deduct the net capital loss on the return filed under this chapter for the taxable year for which the net capital loss is incurred;

(c) the decrease in salary expense deduction for federal income tax purposes due to claiming the federal work opportunity credit under Section 51, Internal Revenue Code;

(d) the decrease in qualified research and basic research expense deduction for federal income tax purposes due to claiming the federal credit for increasing research activities under Section 41, Internal Revenue Code;

(e) the decrease in qualified clinical testing expense deduction for federal income tax purposes due to claiming the federal credit for clinical testing expenses for certain drugs for rare diseases or conditions under Section 45C, Internal Revenue Code;

(f) any decrease in any expense deduction for federal income tax purposes due to claiming any other federal credit;

(g) the safe harbor lease adjustment required under Subsections 59-7-111(1)(b) and (2)(b);

(h) any income on the federal corporation income tax return that has been previously taxed by Utah;

(i) an amount included in federal taxable income that is due to a refund of a tax, including a franchise tax, an income tax, a corporate stock and business tax, or an occupation tax:

(i) if that tax is imposed for the privilege of:

(A) doing business; or

(B) exercising a corporate franchise;

(ii) if that tax is paid by the corporation to:

(A) Utah;

(B) another state of the United States;

(C) a foreign country;

(D) a United States possession; or

(E) the Commonwealth of Puerto Rico; and

(iii) to the extent that tax was added to unadjusted income under Section 59-7-105;

(j) a charitable contribution, to the extent the charitable contribution is allowed as a subtraction under Section 59-7-109;

(k) subject to Subsection (3), 50% of a dividend considered to be received or received from a subsidiary that:

(i) is a member of the unitary group;

(ii) is organized or incorporated outside of the United States; and

(iii) is not included in a combined report under Section 59-7-402 or 59-7-403;

(l) subject to Subsection (4) and Section 59-7-401, 50% of the adjusted income of a foreign operating company;

(m) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold or exchanged by a member of a selling consolidated group as defined in Section 338, Internal Revenue Code, if an election has been made in accordance with Section 338(h)(10), Internal Revenue Code;

(n) the amount of gain or loss that is included in unadjusted income but not recognized for federal purposes on stock sold, exchanged, or distributed by a corporation in accordance with Section 336(e), Internal Revenue Code, if an election under Section 336(e), Internal Revenue Code, has been made for federal purposes;

(o) subject to Subsection (5), an adjustment to the following due to a difference between basis for federal purposes and basis as computed under Section 59-7-107:

(i) an amortization expense;

(ii) a depreciation expense;

(iii) a gain;

(iv) a loss; or

(v) an item similar to Subsections (1)(o)(i) through (iv);

(p) an interest expense that is not deducted on a federal corporation income tax return under Section 265(b) or 291(e), Internal Revenue Code;

(q) 100% of dividends received from a subsidiary that is an insurance company if that subsidiary that is an insurance company is:

(i) exempt from this chapter under Subsection 59-7-102(1)(c); and

(ii) under common ownership;

(r) subject to Subsection 59-7-105(10), for a corporation that is an account owner as defined in Section 53B-8a-102, the amount of a qualified investment as defined in Section 53B-8a-102.5:

(i) that the corporation or a person other than the corporation makes into an account owned by the corporation during the taxable year;

(ii) to the extent that neither the corporation nor the person other than the corporation described in Subsection (1)(r)(i) deducts the qualified investment on a federal income tax return; and

(iii) to the extent the qualified investment does not exceed the maximum amount of the qualified investment that may be subtracted from unadjusted income for a taxable year in

126 accordance with Subsection 53B-8a-106(1);

127 ~~[(s) for a corporation that makes a donation, as that term is defined in Section~~
128 ~~53B-8a-201, to the Student Prosperity Savings Program created in Section 53B-8a-202, the~~
129 ~~amount of the donation to the extent that the corporation did not deduct the donation on a~~
130 ~~federal income tax return;]~~

131 ~~[(t)]~~ (s) for purposes of income included in a combined report under Part 4, Combined
132 Reporting, the entire amount of the dividends a member of a unitary group receives or is
133 considered to receive from a captive real estate investment trust;

134 ~~[(u)]~~ (t) the increase in income for federal income tax purposes due to claiming a:

135 (i) qualified tax credit bond credit under Section 54A, Internal Revenue Code; or

136 (ii) qualified zone academy bond under Section 1397E, Internal Revenue Code;

137 ~~[(v)]~~ (u) for a taxable year beginning on or after January 1, 2019, but beginning on or
138 before December 31, 2019, only:

139 (i) the amount of any FDIC premium paid or incurred by the taxpayer that is
140 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
141 Revenue Code, on the taxpayer's 2018 federal income tax return; plus

142 (ii) the amount of any FDIC premium paid or incurred by the taxpayer that is
143 disallowed as a deduction for federal income tax purposes under Section 162(r), Internal
144 Revenue Code, for the taxable year;

145 ~~[(w)]~~ (v) for a taxable year beginning on or after January 1, 2020, the amount of any
146 FDIC premium paid or incurred by the taxpayer that is disallowed as a deduction for federal
147 income tax purposes under Section 162(r), Internal Revenue Code, for the taxable year; and

148 ~~[(x)]~~ (w) for a taxable year beginning on or after January 1, 2020, but beginning on or
149 before December 31, 2020, the amount of:

150 (i) a paycheck protection loan similar to a loan forgiven in accordance with 15 U.S.C.
151 Sec. 636(a)(36) that is:

152 (A) authorized by the federal government;

153 (B) provided in response to COVID-19;

154 (C) forgiven if the borrower meets the expenditure requirements; and

155 (D) subject to federal income tax, to the extent that a deduction for the expenditures
156 paid with the loan is disallowed; and

157 (ii) any grant funds or forgiven loans that:

158 (A) the taxpayer receives from the state, a county within the state, or a municipality

159 within the state in response to COVID-19;

160 (B) are funded using federal revenue received by the state, the county, or the

161 municipality to respond to COVID-19; and

162 (C) are included in unadjusted income.

163 (2) For purposes of Subsection (1)(b):

164 (a) the subtraction shall be made by claiming the subtraction on a return filed:

165 (i) under this chapter for the taxable year for which the net capital loss is incurred; and

166 (ii) by the due date of the return, including extensions; and

167 (b) a net capital loss for a taxable year shall be:

168 (i) subtracted for the taxable year for which the net capital loss is incurred; or

169 (ii) carried forward as provided in Sections 1212(a)(1)(B) and (C), Internal Revenue

170 Code.

171 (3) (a) For purposes of calculating the subtraction provided for in Subsection (1)(k), a

172 taxpayer shall first subtract from a dividend considered to be received or received an expense

173 directly attributable to that dividend.

174 (b) For purposes of Subsection (3)(a), the amount of an interest expense that is

175 considered to be directly attributable to a dividend is calculated by multiplying the interest

176 expense by a fraction:

177 (i) the numerator of which is the taxpayer's average investment in the dividend paying

178 subsidiaries; and

179 (ii) the denominator of which is the taxpayer's average total investment in assets.

180 (c) (i) For purposes of calculating the subtraction allowed by Subsection (1)(k), in

181 determining income apportionable to this state, a portion of the factors of a foreign subsidiary

182 that has dividends that are partially subtracted under Subsection (1)(k) shall be included in the

183 combined report factors as provided in this Subsection (3)(c).

184 (ii) For purposes of Subsection (3)(c)(i), the portion of the factors of a foreign

185 subsidiary that has dividends that are partially subtracted under Subsection (1)(k) that shall be

186 included in the combined report factors is calculated by multiplying each factor of the foreign

187 subsidiary by a fraction:

188 (A) not to exceed 100%; and

189 (B) (I) the numerator of which is the amount of the dividend paid by the foreign

190 subsidiary that is included in adjusted income; and

191 (II) the denominator of which is the current year earnings and profits of the foreign

192 subsidiary as determined under the Internal Revenue Code.

193 (4) (a) For purposes of Subsection (1)(l), a taxpayer may not make a subtraction under

194 Subsection (1)(l):

195 (i) if the taxpayer elects to file a worldwide combined report as provided in Section

196 59-7-403; or

197 (ii) for the following:

198 (A) income generated from intangible property; or

199 (B) a capital gain, dividend, interest, rent, royalty, or other similar item that is

200 generated from an asset held for investment and not from a regular business trading activity.

201 (b) In calculating the subtraction provided for in Subsection (1)(l), a foreign operating

202 company:

203 (i) may not subtract an amount provided for in Subsection (1)(k) or (l); and

204 (ii) prior to determining the subtraction under Subsection (1)(l), shall eliminate a

205 transaction that occurs between members of a unitary group.

206 (c) For purposes of the subtraction provided for in Subsection (1)(l), in determining

207 income apportionable to this state, the factors for a foreign operating company shall be

208 included in the combined report factors in the same percentages as the foreign operating

209 company's adjusted income is included in the combined adjusted income.

210 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

211 commission may by rule define what constitutes:

212 (i) income generated from intangible property; or

213 (ii) a capital gain, dividend, interest, rent, royalty, or other similar item that is

214 generated from an asset held for investment and not from a regular business trading activity.

215 (5) (a) For purposes of the subtraction provided for in Subsection (1)(o), the amount of

216 a reduction in basis shall be allowed as an expense for the taxable year in which a federal tax

217 credit is claimed if:

218 (i) there is a reduction in federal basis for a federal tax credit; and

219 (ii) there is no corresponding tax credit allowed in this state.

220 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
221 commission may by rule define what constitutes an item similar to Subsections (1)(o)(i)
222 through (iv).

223 Section 3. Section **59-10-1017** is amended to read:

224 **59-10-1017. Utah Educational Savings Plan tax credit.**

225 (1) As used in this section:

226 (a) "Account owner" means the same as that term is defined in Section 53B-8a-102.

227 (b) "Grantor trust" means the same as that term is defined in Section 53B-8a-102.5.

228 (c) "Higher education costs" means the same as that term is defined in Section
229 53B-8a-102.5.

230 (d) "Maximum amount of a qualified investment for the taxable year" means, for a
231 taxable year, the product of 5% and:

232 (i) subject to Subsection (1)(d)(iii), for a claimant, estate, or trust that is an account
233 owner, if that claimant, estate, or trust is other than husband and wife account owners who file
234 a single return jointly, the maximum amount of a qualified investment:

235 (A) listed in Subsection 53B-8a-106(1)(e)(ii); and

236 (B) increased or kept for that taxable year in accordance with Subsections
237 53B-8a-106(1)(f) and (g);

238 (ii) subject to Subsection (1)(d)(iii), for claimants who are husband and wife account
239 owners who file a single return jointly, the maximum amount of a qualified investment:

240 (A) listed in Subsection 53B-8a-106(1)(e)(iii); and

241 (B) increased or kept for that taxable year in accordance with Subsections
242 53B-8a-106(1)(f) and (g); or

243 (iii) for a grantor trust:

244 (A) if the owner of the grantor trust has a single filing status or head of household
245 filing status as defined in Section 59-10-1018, the amount described in Subsection (1)(d)(i); or

246 (B) if the owner of the grantor trust has a joint filing status as defined in Section
247 59-10-1018, the amount described in Subsection (1)(d)(ii).

248 (e) "Owner of the grantor trust" means the same as that term is defined in Section
249 53B-8a-102.5.

(f) "Qualified investment" means the same as that term is defined in Section 53B-8a-102.5.

(2) Except as provided in Section 59-10-1002.2 and subject to the other provisions of this section, a claimant, estate, or trust that is an account owner may claim a nonrefundable tax credit equal to the product of:

(a) the amount of a qualified investment made:

(i) during the taxable year; and

(ii) into an account owned by the claimant, estate, or trust; and

(b) 5%.

(3) A claimant, estate, or trust, or a person other than the claimant, estate, or trust, may make a qualified investment described in Subsection (2).

(4) A claimant, estate, or trust that is an account owner may not claim a tax credit under this section with respect to any portion of a qualified investment described in Subsection (2) that a claimant, estate, trust, or person described in Subsection (3) deducts on a federal income tax return.

(5) A tax credit under this section may not exceed the maximum amount of a qualified investment for the taxable year.

(6) A claimant, estate, or trust that is an account owner may not carry forward or carry back the tax credit under this section.

~~[(7) A claimant, estate, or trust may claim a tax credit under this section in addition to the tax credit described in Section 59-10-1017.1.]~~

Section 4. Section **63I-2-259** is amended to read:

63I-2-259. Repeal dates -- Title 59.

(1) In Section 59-2-926, the language that states "applicable" and "or 53F-2-301.5" is repealed July 1, 2023.

(2) Subsection 59-7-106(1)(~~x~~)(w) is repealed December 31, 2021.

(3) Section 59-7-620 is repealed December 31, 2021.

(4) Subsection 59-10-114(2)(j) is repealed December 31, 2021.

Section 5. Repealer.

This bill repeals:

Section **59-10-1017.1, Student Prosperity Savings Program tax credit.**

281 Section 6. **Retrospective operation.**

282 (1) Except as provided in Subsection (2), this bill has retrospective operation for a
283 taxable year beginning on or after January 1, 2021.

284 (2) The changes to Section 63I-2-259 have retrospective operation to January 1, 2021.